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No. 85-292

In The

Supreme Court of the United States

October Term, 1985

THOMAS G. BECKHAM,

Petitioner,

vs.

J. GORDON HARRIS, HORACE JORDAN, WINFRED GORE, ELTON JOHNSON, BOBBY JOHNSON, J.D. FLOWERS, JOSHUA VAUGHT, WORTH LEE, A.B. GRAINGER, BILL WARD, HAROLD ROGERS, and JAMES O. DUNN,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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TABLE OF CONTENTS

Page

LIST OF ALL PARTIES TO FOURTH CIRCUIT APPEAL i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

ARGUMENT 3

A. THERE WAS NO DENIAL OF PETITIONER'S LIBERTY INTEREST 4

1. PETITIONER'S ADMISSION OF MISCONDUCT NEGATED THE LIBERTY REQUIREMENT OF A TERMINATION HEARING 4

2. PETITIONER'S SUBSEQUENT CRIMINAL TRIAL CURED ANY DUE PROCESS INFRACTION ARISING FROM DENIAL OF A TERMINATION HEARING 5

B. PETITIONER HAD NO PROTECTABLE PROPERTY RIGHT IN HIS POSITION AS OFFICER WITH THE HORRY COUNTY POLICE DEPARTMENT 6

1. PETITIONER WAS AN EMPLOYEE AT WILL 6

2. PETITIONER WAIVED ANY PROPERTY INTEREST CLAIMS HE MIGHT HAVE HAD BY FAILING TO REQUEST A TERMINATION HEARING IN A TIMELY FASHION 9

3. HAD PETITIONER'S EMPLOYMENT BEEN TERMINABLE ONLY FOR CAUSE, SUCH CAUSE EXISTED AND ANY PROPERTY RIGHTS INHERENT IN HIS EMPLOYMENT WERE FORFEITED 10

CONCLUSION 11

TABLE OF AUTHORITIES

Cases	Page(s) at Which Cited
Arnett v. Kennedy, 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed. 2d 15 (1974)	6, 9
Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed 2d 548 (1972)	4, 5, 6
Bunting v. City of Columbia, 639 F.2d 1090 (4th Cir. 1981)	9
Codd v. Velger, 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed. 2d 92 (1977)	4
Cox v. Northern Virginia Transportation Commission, 551 F.2d 555 (4th Cir. 1976)	5
Gooley v. Conway, 590 F.2d 744 (8th Cir. 1979)	8
Hark v. Dragon, 611 F.2d 11 (2nd Cir. 1979)	8
Hutto v. Waters, 552 F. Supp. 266 (E.D. Va. 1982)	9
Lake Michigan College Federation of Teachers v. Lake Michigan Community College, 518 F.2d 1091 (6th Cir. 1975), *cert. denied*, 427 U.S. 904 (1976)	8
Lawrimore v. American Health and Life Ins. Co., 276 S.C. 112, 276 S.C.2d 296 (1981)	10
Lyznicki v. Board of Education, 707 F.2d 949 (7th Cir. 1983)	7
Maloney v. Sheehan, 453 F. Supp. 1131, 1141 (D. Conn. 1978)	9
Peppers v. United States Army, 479 F.2d 79 (4th Cir. 1973)	5
Prince v. Bridges, 537 F.2d 1269, 1271 (4th Cir. 1976)	4, 6
Shirck v. Thomas, 486 F.2d 691, 692 (7th Cir. 1973)	9

STATEMENT OF THE CASE

This matter arises out of the termination of petitioner from the Horry County Police Department on February 28, 1981 for admittedly falsifying an affidavit and destroying a report of a fellow officer pertaining to the same incident for which the affidavit had been prepared. (App. 20, 39, 46-48)

Petitioner was originally employed by the Horry County Police Department as a patrolman on July 25, 1979. At the time of his employment, and during the events in issue, the Horry County Police Department was governed by the Horry County Police Commission, which was established by statute, (1959 Acts and Joint Resolutions, South Carolina, Number 21) (App. 1). The Horry County Police Commission adopted the Horry County Police personnel policies (App. 2), which remained in effect until the Horry County Police Commission was abolished by County Ordinance on April 16, 1981. (App. 3)

In January, 1981, plaintiff was assigned to the Narcotics Division of the Horry County Police Department as an undercover agent. He remained in this capacity until terminated on February 28, 1981 after voluntarily executing a statement during an intra-departmental investigation in which he admitted that he had executed a false affidavit relative to obtaining a search warrant in a drug bust (App. 20, 39, 46-48) and had destroyed a fellow officer's statement made in connection with the same incident.[1] (App. 23)

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[1]It was subsequently learned that plaintiff had also executed five other false affidavits which were the bases of the issuance of arrest warrants and additionally filed a false incident report and two false case reports in the same matter.

Upon being interviewed by the Chief relative to these incidents, petitioner did not request a pretermination, or any other, hearing. Rather, when asked what action should be taken, petitioner volunteered to resign. (App. 50)

Subsequent to petitioner's termination, an investigation of the incident was conducted by the South Carolina State Law Enforcement Division. During the course of this investigation some five days after his termination, petitioner gave a statement to the SLED investigator similar to the one previously given to the Horry County Police Department. (App. 27)

Thereafter, on or about March 12, 1981, petitioner was indicted by the State of South Carolina on charges of false swearing, conspiracy and obstruction of justice. He was later tried and acquitted of these charges in April, 1981.

On April 16, 1981, the Horry County Police Commission was dissolved by County ordinance. (App. 3) Thereafter, on April 30, 1981, petitioner, for the first time, some two months after his termination, and two weeks after the dissolution of the Police Commission, sought a hearing relative to his dismissal. Since the Horry County Police Commission had been dissolved, he made his request to the County Administrator and to the Horry County Grievance Committee. These requests were denied on grounds that petitioner had failed to follow the prescribed steps provided in the Horry County personnel policy, i.e., he had failed to submit his request for a hearing in a timely fashion.[2]

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[2]Horry County personnel policy required the affected employee to request a hearing within thirty (30) days of the event leading to his dismissal. (App. 6). Sixty (60) days had elapsed in this instance before petitioner requested a hearing.

Thereafter, almost two years later, petitioner instituted the instant action.

———o———

ARGUMENT

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DID NOT ERR IN REVERSING THE JUDGMENT BELOW.

Respondents have made no attempt to analyze the Fourth Circuit decisions which petitioner contend demonstrates a predeliction on the part of that Court to invade the province of the jury in its appellate review process. Whatever shortcomings the Fourth Circuit may, or may not, have in his regard, its decision in this case is manifestly correct.

There is no dispute as to the relevant facts. Petitioner did falsify an affidavit in relation to a drug bust in which he was a participant. He also invaded the office of the Solicitor, removed a statement from a file on his desk relating to the incident in issue which had been prepared by a fellow officer and destroyed it. He thereafter voluntarily made a full confession of these improper actions to his superiors. As a result he was terminated. Two months later, he unsuccessfully sought an administrative review of his dismissal.

Based on these undisputed facts, petitioner contends that the Police Commission's failure to provide him with an unsolicited, and apparently undesired, administrative hearing at the time of his discharge denied him his con-

stitutionally protected liberty and property rights. There being no dispute as to material facts, the issues presented by petitioner's contentions were solely legal in character and their resolution were within the exclusive province of the Court.

A. THERE WAS NO DENIAL OF PETITIONER'S LIBERTY INTEREST.

1. Petitioner's admission of misconduct negated the liberty requirement of a termination hearing.

Disregarding the fact that petitioner obviously did not desire a hearing at the time of his termination and never sought one until two months thereafter, the fact that he was not provided a forum on the subject did nof impinge upon his liberty rights. The liberty remedy mandated by the Due Process Clause of the Fourteenth Amendment is solely one to provide an opportunity to attempt to refute charges which impact on the reputation and future employability of the accused. *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Consequently, so far as his liberty interest was concerned, there must have been a factual dispute between the Horry County Police Commission and petitioner which would have had some significant bearing on his reputation in order for him to have been entitled to a dismissal hearing. *Codd v. Velger,* 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977). There was none.

Petitioner had voluntarily admitted to his superiors that he had falsified and destroyed official documents. He was terminated for this conduct. As noted in *Prince v. Bridges,* 537 F.2d 1269, 1271 (4th Cir. 1976):

> Interpreting its decision in *Roth, supra*, the Supreme Court has held that in cases concerning dismissal of a public employee, '*liberty is not offended by dismissal from employment itself, but instead dismissal based upon an unsupported charge which could wrongfully injure the reputation of an employee.*' (Emphasis added).

Having confessed his guilt, denial of a hearing on the issue did not, as a matter of law, constitute a violation of his liberty interest.

2. Petitioner's subsequent criminal trial cured any due process infraction arising from denial of a termination hearing.

As noted above, the purpose of a hearing, so far as one's liberty interest is concerned, is to provide an employee a forum in which to refute charges unfairly levelled against him which might damage his standing in the community or otherwise impose a stigma on him that forecloses his freedom to take advantage of other employment opportunities. *Board of Regents of State Colleges v. Roth, supra.* Petitioner was provided such a forum in his trial on the criminal charges of conspiracy, obstruction of justice and false swearing, which resulted in his acquittal. This cured any due process liberty defects, had they existed, which may not have been previously afforded him. *Cox v. Northern Virginia Transportation Commission,* 551 F.2d 555 (4th Cir. 1976); *Peppers v. United States Army,* 479 F.2d 79 (4th Cir. 1973).[3]

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[3]In both of the above cases the Court noted that proceedings held subsequent to termination presented an adequate forum to the discharged employee in which to clear his name and thereby correct any alleged due process violation.

B. PETITIONER HAD NO PROTECTABLE PROPERTY RIGHT IN HIS POSITION AS OFFICER WITH THE HORRY COUNTY POLICE DEPARTMENT.

1. Petitioner was an employee at will.

> To have a property interest in a benefit [a job], a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

Board of Regents of State Colleges v. Roth, supra.

A property right in employment arises solely in an instance where any employee can be terminated only "for a cause." Under such circumstances a continuing property interest in employment is present until the employer shows sufficient cause for termination. *Arnett v. Kennedy,* 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974). Where, however, employment is terminable at will of the employer, no property right protectable by the due process clause inheres in the employee. *Prince v. Bridges,* 537 F.2d 1269 (4th Cir. 1976).

The Horry County Police personnel policy, which was in effect during petitioner's employment until a month and a half after his termination, provided in pertinent part that:

> Commission may hire such personnel as it deems necessary for the orderly process of law enforcement and shall make all rules and regulations for governing the county police and shall be the final authority upon all matters relative to the conduct of such personnel. *The terms of all personnel shall be at the pleasure of said commission,* and they shall have the exclusive power to remove any policeman or other personnel therein,

> but first such employee shall be allowed a hearing before the commission prior to his removal. (App. 2) (Emphasis added)

This policy parrots the language of the enabling legislation (App. 1).

Under its clear terms, petitioner's term of employment was at the pleasure of the Commission. As such he was an employee at will and, therefore, had no property right in his employment. The fact that the personnel policy provided petitioner an opportunity for a pretermination hearing does not alter this fact. *Lyznicki v. Board of Education,* 707 F.2d 949 (7th Cir. 1983).

Lyznicki involved the demotion, without notice or hearing of plaintiff, a high school principal, to the position of classroom teacher. He thereafter filed suit alleging that he had been deprived of his property interest in the principal's job without due process.

Plaintiff had tenure as a teacher but not as a principal. He contended, however, that the Illinois Code gave him a property right in continued employment as a principal, quite apart from any contract. The Code provided in pertinent part that a principal who had two years or more experience "may be reclassified by demotion or reduction in rank from one position to another for which a lower salary is paid without written notice from the board of the proposed reclassification by April 1 of the year in which the contract expires." 707 F.2d at 952. The Code further provided that within ten days of receiving such notice, the principal may request, and is entitled to receive, a private hearing, and if he is not satisfied with the results, a public

hearing before the Board of Education. Plaintiff apparently requested, but did not, receive such a hearing.

The language used by the Court in denying plaintiff's claim that a right to a hearing conferred upon him a property interest is apposite.

> Although the statute confers a right to a hearing, no standards are prescribed for the board to follow at the hearing; it seems it can reclassify a principal, after expiration of his yearly contract, for any reason or no reason. It is hard to believe that a right to a particular office is created by a statute that allows the 'right' to be terminated in the employer's discretion. Taking the statute as a whole, it makes employment as a principal employment at will, which *Roth* held created no Fourteenth Amendment property right, 408 U.S. at 578, 92 S.Ct. at 2709, and which indeed is the opposite of the lifetime (tenure) employment that *Perry* held was a Fourteenth Amendment property right. *A mere right to notice and hearing, which places no more constraint on the employer's freedom of action than is inherent in having to confront the employee in a public forum, does not change the essential character of the employment relationship as one of employment at will; it does not convert it into a form of tenure employment and thus create a Fourteenth Amendment property right.* 707 F.2d at 952 (Emphasis added).

Also in accord with this analysis are the line of cases construing the hearing requirements of the Comprehensive Employment Training Act (CETA) 29 C.F.R. § 98.26. *Gooley v. Conway,* 590 F.2d 744 (8th Cir. 1979); *Hark v. Dragon,* 611 F.2d 11 (2nd Cir. 1979); *Lake Michigan College Federation of Teachers v. Lake Michigan Community College,* 518 F.2d 1091 (6th Cir. 1975), *cert. denied,* 427 U.S. 904 (1976).

As stated by the Court in *Maloney v. Sheehan,* 453 F. Supp. 1131, 1141 (D. Conn. 1978):

> Plaintiff bases his claim of a property interest on the CETA regulation which required written notice and an opportunity to respond to charges before termination. He argues that the regulation gave him a right to continued employment unless and until these procedures were followed. This argument, however, loses sight of 'the decisive distinction between procedure, and substance', *Shirck v. Thomas,* 486 F.2d 691, 692 (7th Cir. 1973). A law establishes a property interest in employment if it restricts the grounds on which an employee may be discharged. For example, if discharge can only be for 'just cause,' an employee has a right to continued employment until there is just cause to dismiss him. *See Arnett v. Kennedy,* 416 U.S. 134 . . . (1974) (opinion of Rehnquist, J.). But the CETA regulation allowed an employer to discharge an employee for any reason or for no reason at all. *A guarantee of procedural fairness does not establish a property interest.* (Citations omitted) (emphasis added).

See also Hutto v. Waters, 522 F. Supp. 266 (E.D. Va. 1982) and *Bunting v. City of Columbia,* 639 F.2d 1090 (4th Cir. 1981) for similar holdings.

2. Petitioner waived any property interest claims he might have had by failing to request a termination hearing in a timely fashion.

Admittedly the first time plaintiff sought a hearing relative to his termination was on April 30, 1981, two months after his termination, and two weeks after the abolishment of the Horry County Police Commission. By this time, the Police Commission policy had been replaced by the Horry County personnel policy. This policy re-

quired notification by an employee to his department head within thirty (30) working days after the incident that he desired a hearing on his grievance. (App. 6) Petitioner failed to do so. His request was not made until sixty (60) days after the event. By his timing, he was not only thirty (30) days late in his request to the County Administrator for a hearing, but more importantly, made it impossible for his grievance to be heard by his employer, the Horry County Police Commission, which had been dissolved two weeks earlier. Clearly by such dilatory conduct petitioner knowingly waived his right to a termination hearing. *Lawrimore v. American Health and Life Ins. Co.*, 276 S.C. 112, 276 S.C.2d 296 (1981).

3. Had petitioner's employment been terminable only for cause, such cause existed and any property rights inherent in his employment were forfeited.

The Horry County Police Commission personnel policies in its guidelines for disciplinary action listed as dischargeable offenses falsification of records and destruction of property of the County or of a fellow worker. (App. 2) Petitioner admitted to both offenses. Consequently, by his own admissions, he established just cause for his termination.

———o———

CONCLUSION

Petitioner was deprived of neither his liberty nor property rights by Horry County's refusal to comply with petitioner's request for a hearing, which was not made until two months after his termination for admittedly falsifying and destroying official documents.

Respectfully submitted,

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September 17, 1985.

South Carolina Act No. 21 of 1959 (uncodified)

An Act To Provide For A Police Commission For Horry County And To Make An Appropriation Therefor.

* * * *

SECTION 2. Powers and duties of commission—duties of chief and policemen. The terms of the county police, including the chief, shall be at the pleasure of the commission and the commission shall have exclusive power to remove any county policeman, including the chief, but such policeman shall first be allowed a hearing before the commission prior to his removal; *provided,* however, that such county policeman may be suspended by the commission pending such hearing.

———

PERSONNEL POLICIES FOR HORRY COUNTY POLICE DEPARTMENT EMPLOYEES

* * * *

The Horry County Police Department and Horry County Jail are under the direction of the Horry County Police Commission. The Commission may hire such personnel as it deems necessary for the orderly process of law enforcement and shall make all rules and regulations for governing the county police and shall be the final authority upon all matters relative to the conduct of such personnel. The terms of all personnel shall be at the pleasure of the said commission, and they shall have exclusive power to remove any county policeman or other personnel therein, but first such employee shall be allowed a hearing before the commission prior to his removal. However, the employee may be suspended by the commission pending such hearing. The commission shall investigate promptly any complaint made against any policeman for neglect of duty or for misuse of power.

* * * *

GUIDELINES FOR DISCIPLINARY ACTION

* * * *

III. RULES OF CONDUCT

Offenses which will result in disciplinary action include but are not limited to those presented below. Since the violation of some rules is more serious than the violation of others, these rules have been divided into three groups:

* * * *

Group C: First violation may result in discharge.

1. Falsification of records or misrepresentation of material information.

* * * *

4. Willfully causing damage or destruction of equipment or property belonging to the County or to fellow workers.

* * * *

STATE OF)
SOUTH CAROLINA) ORDINANCE NO. 5-81
COUNTY OF HORRY)

WHEREAS, the Horry County Council has determined that it would be in the best interest of the citizens of Horry County to abolish certain Boards and Commissions created by special legislation so as to make County Government more workable within the framework of Act No. 692, of 1975, more popularly known as the "Home Rule Act";

NOW THEREFORE, the Horry County Council in meeting duly assembled ordains and establishes in accordance with the requirements of law as follows:

a. That the following Commissions be, and the same are hereby abolished.

1. The Horry County Development Planning and Tourism Commission.
2. The Horry County Ecological Commission.
3. The Horry County Marketing Commission.
4. The Horry County Police Commission.
5. The Horry County Recreation Board which was established by Act No. 687, of 1973.

b. The functions, duties, and responsibilities of each of the Commissions hereinabove dissolved, shall devolve upon the Horry County Council and/or the Horry County Administrator as may be appropriate and in compliance with the "Home Rule Act", or the general law of this state.

* * * *

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
EMPLOYEE'S PERSONNEL POLICIES

* * * *

GRIEVANCE PROCEDURE

I. PURPOSE

To provide a means whereby any employee who feels that he or she has been subjected to unfair, discriminatory, or abusive treatment may secure a hearing without delay and be assured of a prompt, orderly, and fair response to the grievance or appeal.

II. STATEMENT OF POLICY

It is the policy of Horry County that all employees shall be treated fairly and consistently in all matters related to their employment. When an employee feels that he has not been so treated, he shall have the right to present a grievance or appeal free from interference, restraint, coercion, discrimination or reprisal.

The employee shall be entitled to such time off from his regular duties as may be necessary and reasonable for the presentation and processing of his grievance or appeal without loss of pay, vacation, or other credits.

III. GENERAL

Grievances may include, but are not necessarily limited to, dismissal, suspension, involuntary transfer, promotion, and demotion. Compensation shall not be deemed a proper subject for consideration under the grievance procedure except as it may apply to alleged inequities within a department.

The County Administrator shall appoint a Committee composed of five members to be known as the Grievance Committee. The Committee shall be appointed so that it will produce a cross section of the County's employees. The Committee members shall serve terms of office of three years except that of the members initially appointed, one shall serve for one year, two shall serve for two years, and two shall serve for three year terms of office. Positions which become vacant shall be filled on a interim basis for the remainder of the unexpired term. Whenever a grievance comes before the Committee initiated by or involving an employee of a department of which a Committee member also is an employee, such member shall be disqualified from participating in the hearing.

The Committee shall select a Chairman from among its own members. The Chairman shall serve as the presiding officer at all meetings unless he designates another Committee member to act in his absence.

A quorum shall consist of at least three members and no hearing shall be held without a quorum.

The presiding officer will have control of the proceedings. He shall take whatever action is necessary to insure an equitable, orderly and expeditious hearing. Parties shall abide by his decisions, except when a Committee member objects to a decision to accept evidence, in which case the majority vote of the Committee will govern.

The Committee shall have the authority to call for files, records, and papers pertinent to any investigation; to determine the order of the testimony and the appearance of witnesses; to call additional witnesses; and to secure the services of a recording secretary.

All grievance appeals and decisions must be in writing and issued within the prescribed time limits.

V. PROCEDURE

Whenever possible, a potential grievance should be resolved by the employee and his supervisor during informal discussions. This provides an opportunity for the employee to tell his side of the story and for the supervisor to explain his position in the matter.

Step I. If any employee who has completed at least six months of satisfactory service has a problem which cannot be resolved through the normal process of informal discussion, he may notify his department head, within thirty working days of learnings of the grievable action, that he wishes to present a formal grievance.

The department head, without delay, shall schedule a hearing with the employee. The employee shall reduce the grievance to writing, and shall also have an opportunity to present his case in person. The department head shall conduct whatever investigations and fact findings he may consider necessary. The employee will be advised of the department head's decision in writing within five working days after the hearing.

Step II. If the employee is not satisfied with the decision reached in Step I, he may, within five workdays after receipt of the first step decision, present his grievance in writing to the County Administrator. Within ten working days after receipt of the employee's appeal, the County Administrator will hold a hearing at which both the employee and the department head will have an opportunity to present their cases in full. He shall conduct such in-

vestigations and fact findings as he may consider necessary. The employee and the department head shall be notified in writing of the County Administrator's decision within five working days after the hearing.

Step III. If the employee is not satisfied with the decision reached in Step II he may, within five working days after receipt of the second step decision, present his grievance in writing to the Chairman of the Grievance Committee. The Committee Chairman shall within three working days notify the Grievance Committee and schedule a hearing. The Committee shall conduct such investigations and fact findings as may be necessary and will give its written decision to the County Council within ten working days after the hearing. If the Council approves the Committee's decision, the decision of the Committee shall be final and shall be transmitted to the employee and the employing department. If however, the Council rejects the decision of the Committee, they shall make their own written decision without further hearing, and that written decision shall be final with copies transmitted to the employee and the employing department. The written decision of the County Council shall be rendered to the parties concerned within ten working days after receipt of the Committee's decision.

App. 8

STATE OF SOUTH CAROLINA

County of Horry

SEARCH WARRANT

Date 1-22-81

Officer T. G. Beckham

EXHIBIT A

AFFIDAVIT

Officers T. G. Beckham and Mike Foreman of the Horry County Drug Squad received information on 1-21-81 from a confidential reliable informant, who has given information in the past which has proven to be true and correct, that Jerry High and others had transported marijuana to and from the Ship's Wheel Seafood House, Little River, S.C. in Horry County, within the last 72 hours and that Jerry High and others had a large amount of marijuana stored in the walk-in freezer of the said Ship's Wheel Seafood House. Further, the confidential informant advised that this stored marijuana was to be moved within the next 24 hours. A Search Warrant was obtained from Magistrate Bellamy to search the Ship's Wheel Seafood House. The above named officers along with other officers, kept the Ship's Wheel Seafood House and surrounding area under surveillance. Officer Mike Foreman did on the morning of 1-21-81 observe Jerry High at the Ship's Wheel Seafood House driving a silver Dodge Van. Upon discovering police officers on the scene, Jerry High fled the area in the said van at a high rate of speed. Officers Beckham and Foreman executed the search warrant by searching the Ship's Wheel Seafood House and found pursuant to the said search warrant, 50 cloth wrapped bales, approximately 3,000 pounds of marijuana on the premises. The confidential reliable informant also furnished, within the same time frame mentioned above, information to police officers that three (3) individuals of Cuban Nationality were staying at the Colonial Inn Motel on Hwy #17, Little River (Horry County), S.C. and that these individuals had participated in loading and/or un-

loading marijuana at the Ship's Wheel Seafood House, within the past 72 hours. Officer Beckham and other officers went to the Colonial Inn and Officer Jack Blackwell observed one or more of the occupants of the motel room flea (sic) on foot upon the officers' arrival at the said motel. That within a five block area at the said motel, the same Jerry High who had been observed fleeing the Ship's Wheel Seafood House was observed with (3) individuals believed to be of Cuban Nationality in the van with Jerry High. One was identified by Officer Blackwell as the person fleeing the scene at the Colonial Inn Motel.

Less than one hour elapsed between the time Jerry High was observed fleeing the Ship's Wheel Seafood House and the time his vehicle was stopped and along with (3) three other occupants of the said van were taken into custody and were transported to the Horry County Jail in vehicles other than those belong to Jerry High. Assistant Chief Gene Graham boarded the said stopped Van previously driven by High and drove it to the Horry County Jail. When the van door was opened Chidf (sic) Graham detected a strong ordor (sic) of Marijuana. The Van was locked and secured at the Horry County Jail by Chief Graham and Officer Beckham. All doors, windows and vents were sealed to assure security of its contents. The said Vehicle being one 1977 Dodge Van, Silver in color, license No. JD 3726, NC 80, registered to one Jerry Lynn High of Shallotte, N.C.

That based on the foregoing information furnished by the confidential informant, and personal observation by the above officers, there is reason to believe that in the said van the property described in "description of property sought" is or may be located and that said property

was used in the commission of, along with other things, the crime of possession of marijuana, with the intent to distribute, and/or conspiracy to smuggle marijuana, and/or would furnish evidence that the said crimes were committed.

Done at Conway, S.C.

This 22nd day of January, 1981.

/s/ (Illegible)

MAGISTRATE

/s/ T. G. Beckham HCPD
AFFIANT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Statement made by Tom Beckham to Glen B. Causey of the Horry County Police Department on February 28, 1981, at 3:45 P.M., at the Horry County Jail, Conway, South Carolina.

Q. Tom, do you understand the Miranda warnings that you have read and signed?

A. I do.

Q. You understand you have the right to remain silent. Anything you say can and will be used against you in a Court of law. You have the right to talk with a lawyer and have him present with you while you are being questioned. If you cannot afford a lawyer, one will be appointed to represent you before any questions, if you wish one. If you desire to make a statement or answer any questions, you have the right to stop at any time. Do you understand that?

A. Yes, sir.

Q. Now, Tom, you want to give me a statement on tape concerning the trouble you are involved in at this time?

A. Yes, sir, I do. I want to get it all out in the open.

Q. Alright, Tom. On January 20th, were you involved in a drug raid up in the Little River area?

A. Yes, sir, it started on the 20th, but the raid didn't occur until the 21st.

Q. Would you tell me what happened up there that morning?

A. Yes, sir. Approaching daylight hours, I was—we had been on a stake-out all night. Mike Foreman and myself. D.E.A. and several Horry County officers had been up there earlier but they had all left. And Mike and I—well, I called Mike on the radio and told him I was coming to the car because I wet and cold and I had to dry out just a minute.

Q. Alright, now. What particular place were you watching?

A. Watching the Ship's Wheel Restaurant.

Q. Up on Highway 17 near the State line?

A. Yes, sir. In Little River, I met Mike back at what we termed on the radio as "the corner" which is the South corner of where the Welcome Center parking lot meets the highway, which is . . . from there you could view the Ship's Wheel Restaurant. I went back to the car and we were sitting in the car and I was sitting in the front seat looking towards the Restaurant and Mike was sitting in the back seat and we were sitting there talking, and a black truck pulled up beside us. And I turned to see who was in it and there was this Cuban-looking fellow sitting in the passenger seat and somebody I didn't know in the driver's seat—Caucasion male, approximately late 30's, early 40's.

Q. Now, this was at the Welcome Center?

A. Welcome center parking lot. And Mike asked me who was there because he couldn't see from where he was because he was slumped down in the car. I described the truck to him. Just a second later, the truck drove off. Mike, without even looking at the truck, told me that the

truck I had described was Jerry High's brother. So a few minutes later, another car pulls up—I don't even remember the description. I remember it was a fairly small car —a black male in it. And he asked me where was Mike. And I acted like I didn't know what he was talking about because he couldn't see Mike and I didn't want him really to know what was going on up there. And he said, "Ya'll painted your car, hadn't you?" And I said—I still acted like I didn't know what he was talking about. And he said, "Is Mike in the car?" And he gets out and walks over there and said, "Yeah, there you are." And he gets in the car and introduces himself to me as "Buzzard" like in the bird. And he started talking to Mike, and he said, "Ya'll waiting on a shipment of marijuana. That truck's been rerouted and went to Calabash." And Mike said, "Yeah, how do you know it?" He said, "It's just the talk. Everybody knows your cars. They have got descriptions and license tags on all ya'll's cars. There's people that tell them." About that time, this blue truck came by on the highway and this fellow "Buzzard" pointed it out and said, "There goes Bobby Gore." And that was the only time I had seen Bobby Gore's truck that day. Hadn't seen it before or afterwards. I didn't even know Bobby Gore. As a matter of fact, besides hearing his name, I didn't even know Jerry High. So, anyway after a few minutes more conversation, he left. And were were sitting there and sat there about fifteen or twenty more minutes. And this telephone truck pulls up in the parking lot of the Ship's Wheel and a guy gets out with this paper in his hand—yellow or white or what—he gets out and walks up to the front door like he was trying to get somebody to the door and walked around, looked over the fence and the back and was looking at the ground a lot. And Mike was talking

about, "He's in on it. He's in on this. I know he is." So the guy gets back in the truck and goes back over to the Welcome Center and uses the phone. Goes inside first, and then comes back and uses the phone. So this time, after he leaves, I told Mike, I said, "Look, are we going to sit here all day and watch this, or are we gonna—since you got probable cause from your informant, are you going to go ahead and get a search warrant? No sence (sic) sitting here all day since Buzzard tells us it's already gone." So he decides to get a search warrant. I got back in the woods. I went back over in this little chicken coop over there. It was the only dry place I could find and I was wet. So I sit in this chicken coop. About an hour to forty-five minutes later, Mike calls me on the radio and tells me to meet him at 'the corner". I go back over and meet him at the corner, this is the Welcome Center Parking lot; we get in the car and he hands me a search warrant. I look over the search warrant as he was driving and we go over there and he says, "Be careful now, this Cuban . . ."—which he mentioned earlier—a Cuban with his machine gun, ten murders and all this kind of stuff—was running around. I was still scared because of this Cuban fellow that was supposed to be there. So I got out of the car with my shotgun and leaned it against the wall on the porch and took the search warrant copy I had and stuck it up in the screen, on the screen door where the spring attaches to it.

Q. At that time, nobody was in the yard of the Ship's Wheel—no vehicles?

A. Nobody but Mike and I. Nobody had been there besides that van that I saw—that telephone company van.

So, as soon as I cut the lock off the door, I looked at Mike and hollered "Bingo. There it is." And he takes a look and he sees all these bails of marijuana. And he says, "I'm gonna get us some back-up." So he goes back down, gets his radio, tries to call the County, and he can't reach them. Cussed about the radio not working, so he switched over and called North Myrtle Beach and tells them, "10-33. We need some help up here. Notify the County and notify Buddy Fowler and tell him to come on up." So I went to one side of the yard with my shotgun, he went to the other side. Like I said, he was still (sic) us to watch out for this Cuban guy. And he said, also, that these people might come back to get this dope; that is a bunch of dope. So a few minutes later, I started hearing sirens and a few minutes later a North Myrtle Beach unit arrives. So Mike hollers, "Here's a bunch of Cubans here. They took off running on foot and vans. One of them turned sideways trying to get out of the parking lot—about flipped it over." Well, anybody looked hada' seen there was no tracks in the parking lot besides ours and the telephone company van. I looked at Mike and he kinda' shook his hand like he didn't want me to say anything. I walked over to him, and he said, "You know. They coming up here with these blue lights. I don't want to make them mad like we were calling a false call or something." Then he starts hollering about, "Let's spread out and see if we can't see some of these vehicles" or something. He was still harping about all the vans up here and he knows who they are and we are going to get warrants on them. I said, "Mike, what in the hell are you talking about?" He and I were talking then and he motioned me over there and he said, "Look. Just let me handle this, Motrow." That's what he called me all the time—Motrow. He says, "I know what I'm do-

ing. We're gonna smoke out these boys—the people that's responsible for all this. We couldn't catch them here at the scene; we're gonna smoke them out. This is the way to get them. Let me handle it—I know what I'm doing." I said, "Alright." He said, "Just say what I just said about the van being here and all." I said, "Alright" and so the other units started getting in and they asked me what was going on and I said, "Well, we came up here to get this marijuana and everybody ran from the scene—in the vehicles." So a few minutes later, all the other units started getting in and we blocked off the parking lot and wouldn't let anybody in. And Mike was over there telling this story about how all the vans and all had pulled out, and there was Cubans running around, and one of them had hid in the woods where I just come from and everybody asked me, "What did they look like?" I said, "I don't know; you will have to ask Mike. Mike saw them." And so the conversation came up about some Cubans, which had been mentioned earlier. He had mentioned Cubans that night, that were over at this motel—the Colonial Inn—at Little River. So we decided to go down to see if we could locate these Cubans and talk with them. So Ellis Bellamy and I took Mike's car and Fat Jack—that's Jack Blackwell—and a North Myrtle Beach Policeman went in another car and we went down these to the scene. As we started to pull in, Jack hollers over the radio, "A Cuban just ran from the South end of the building." So Jack Blackwell and I got out and we went back in the woods with a shotgun, looking for this fellow. Couldn't see anybody, so somebody in an unmarked unit—I believe it was you, wasn't it—picked me up, took me back to my car and I started back to the scene—Ellis Bellamy and I did, after we talked to the people at the motel just a second, the manager; he

didn't know the people that we were talking about. So we get back to the motel, I mean Ship's Wheel, and about the time we got, they started hollering on the radio about they had them down there on the road going down to the waterfront. We went back down to the scene and they had this van stopped. Jack Blackwell had three Cubans in his car and Bill Knowles had a fellow in his car. I didn't know any of them. They were going to take them to the County jail and I said, "No, let's—we need to get this thing straightened out. Let's take them to the North Myrtle Beach Police Department." About that time, an order came over the radio to take them to the County Jail. So I was going to go back to the scene to see if I could talk to Mike. I go back to the scene, and as I started back, Bill handed me this drivers license. I didn't pay any attention to it until I got back to the scene. Mike says, "Who have ya'll got down there?" I went to hand him the drivers license and he says, "Jerry High. Come on and let's get the rest of his stuff." Finished loading up the marijuana in the van and we all headed back to the jail. We all got back to the jail and Mike was talking to Buddy Fowler and everybody was talking about this. And they said, "Let's get this van searched" so I went out there and started to open the door to the van and Jim Dunn asked me do I have a search warrant, and I said "No." And he said, "Do ya'll normally inventory-search every vehicle?" I said, "Well, we started a policy but we hadn't really been doing it."

Q. Where was the van then?

A. Parked behind the jail. At which time, Jim Dunn said, "Well, no, let's get a search warrant. Come up

to my office and we'll get up the affidavit for a search warrant." So I came and I told Mike that Jim wanted to get an affidavit for a search warrant. So at this time, he told me to go on over there and get it started. So he comes over—I hadn't been there just a minute. Mike comes over there and sits down at the table—me and Jim and Jim's secretary—the one with the blonde hair. And we sat there and Mike told his whole story and Jim looked at me and said, "Mike saw him at the scene. Can you identify him at the scene?" I said, "I can't identify anybody at the scene. I didn't see anybody that I can identify." And Mike told his story and he called me over to the side and he said, "Just get the affidavit just like I said. I know what I'm doing, Motrow." Rubbing and patting me on the shoulder. Said, "Just let me handle this. I'm in charge. I'll show you how this thing is going to work out —no problem." So we dictated the affidavit and came back over here to the jail and the DEA was here and the man from North Carolina, one of the FBI agents was here, Gary Batten. We were busy talking with him and they had these things where these boats were supposed to be coming up the waterway and everybody was concerned about that. I was wanting to go out with the boats and let Mike handle this thing since he was the one that initiated it. Mike said he had to go somewhere and he wanted to get these warrants up before we get sued for keeping these people in jail. So he told me to take these affidavits and get the warrants up. I went to Judge Johnson and we typed up the affidavit—said something on it—got the warrants up and then we got the search warrant up at the same time using the same affidavit. All we did was on the bottom of each person's warrant, listed down there what part they had played in it—like the Cubans had been mentioned

by the CI and Jerry High's van had been used to transport the Cubans and that we wanted to search the van. But after that, the people were read the warrants. They got out on bond after that.

Q. Tom, in the affidavit of the arrest warrant or the search warrant, was there anything in that that mentioned about them being at the Restaurant when you went up to the Restaurant?

A. In the affidavit, it reads in there that Mike Foreman had observed Jerry High in a van with some Cuban individuals at the scene.

Q. And that was not true, is that correct?

A. No, sir, it was not true.

Q. Did you sign the affidavit?

A. I signed the affidavit. Mike said he wanted me to go ahead and get the warrants up.

Q. But at the time that you signed the affidavit, did you know that was a false affidavit?

A. Yes, sir, I did.

Q. But you signed it anyhow?

A. Yes, sir, I did.

Q. What happened then?

A. Well, like I said, they got out on bond. I told Mike a couple of times that I was worried about doing things this way. Mike said, "Look, I never got you in any problems before. I'll take care of you. No problems gonna be out of this. We're gonna get it all worked out.

We gonna get the people responsible for it. We're gonna smoke them out."

Q. Was there a mention about a key that was found behind the door just inside the jail?

A. Yes, sir. Claude Bellamy brought the key to me I guess about 10:30 that night. Asked me if I knew where they went to—jingled them in front of my face. And I said, "Where did you get these?" He took me back there and told me where he got them. So I took them back there and put them in the lock and they fit the lock.

Q. The lock that came off?

A. Came off the cooler where the marijuana was. And I told Mike that we had the keys and he asked me where I got them from and I said Claude Bellamy found them on the floor. So, Mike called Jack Blackwell and said—I don't know whether he called him or whether he just said that he had talked with Jack Blackwell and that he had told Jack to say he had found the keys. But I think Jack said he wasn't going to say he found the keys.

Q. You say Mike told Jack to say that he found them?

A. This is just what Mike told me—that's hearsay. He said he was gonna call him. He didn't tell me he called him. He said he was gonna call him and talk to him about the keys. I had heard later on—I forgot where I heard it from—that Jack had talked to Mike and Jack said he was not going to say that he had found the keys. I think it was a couple days later—I think it must have been a week or so ago—Bill Knowles came to me and gave me a signed statement to the effect that he had brought Jerry High to the back door and that Jerry High had had his handcuffs

in front of him. And that he had been fumbling around in the car on the way to the station. And he was standing at the back door, he was still fumbling. And something to the effect that he had thrown or had the opportunity to throw—or something like that—to throw something. And Bill didn't remember seeing anything on the floor and he took him on to the booking counter from there. But this same statement—I felt that Bill had mentioned earlier that he hadn't seen Jerry High throw anything and that he was not going to testify that Jerry High threw anything —said he wan't gonna do it.

Q. Do you know if Mike went to Bill Knowles and tried to get Bill to say that he saw he saw him throw the keys.

A. I have talked to Bill since this thing came up and Bill said that Mike had been to him three or four times and that finally he worded the affidavit to the effect that—like I said, that he had the opportunity to throw or maybe tried to throw or something like that—I don't know what all it read. Bill said that there was no way he would testify to it. The only thing it was was Mike had told him he had a air-tight case but he was worried about getting the keys admitted and the only reason he did it was for a pretrial conference while he was going to be out of town. He said he wasn't going to testify on the stand or anything to it.

Q. Who said that?

A. Bill. And that he didn't like the way Mike had approached him. It was kinda like forceful. This same affidavit—I'll tell you now because I have told the Solicitor—I took the affidavit. I felt like Bill was innocent and

that he had been forced into whatever he had put down. I took that affidavit and I've torn it up.

Q. The one that Bill—that you talking about was taken?

A. This wasn't a signed affidavit—it was just a statement for the pre-trial hearing.

Q. That Bill gave?

A. Yes, sir.

Q. And you tore it up?

A. Yes, sir, I've torn it up?

Q. Okay, this past Thursday, did you have a preliminary hearing on this drug case?

A. Yes, sir we did.

Q. And did you testify in the preliminary?

A. No, sir, I refused to testify. I didn't exactly come out and say I'm not testifying to Jim. Mike called me in there a few minutes before the hearing in another room over there across the hall and started to talk to me about I needed to testify this and I needed to testify that and I told him I wouldn't. So we were interrupted, Jim Dunn came and said, "We're getting ready to get started." He called me in the room behind the Court room in the back section where the coffee machine is and he was reiterating again I needed to testify to this and I said, "Mike, I thought this was going to all be straightened out." And he says, "You need to testify to this or we're not going to make the case." And I said, "Fuck the case." So, Mike looked at me real funny like he was disgusted in me and he goes in the Court room. I go in there and sit down. Dur-

ing his testimony, he would be talking and you could tell in there that he was—I don't know whether he was just worried or he was just trying to word it together as he went, but he tried to cover himself but he had already gone too far.

Q. Alright, now did you hear Mike lying on the witness stand under oath?

A. I did, sir.

Q. And you knew he was lying?

A. I did.

Q. Alright, prior to the preliminary hearing, had you told anybody within this department, or anybody else, anything about—that this was a false statement that ya'll made to officers at the Ship's Wheel that morning of the drug bust?

A. I'm sorry, I don't understand your question.

Q. Have you, prior to this preliminary hearing, did you tell anybody that that wasn't the way it happened?

A. No, it wasn't directly after the hearing. Jim tried to get me on the stand a couple of times and asked me what I could testify to and I said, "I can't testify to anything." I wasn't gonna get on the stand.

Q. Alright, when is the first time you mentioned to anybody . . .

A. That the testimony wasn't right?

Q. That the testimony was incorrect.

A. Right after the preliminary, I went to Buddy Fowler and mentioned to him that I didn't like the way things were going. As a matter of fact, we were just com-

ing out of the room there, and I told Buddy Fowler that Mike had lied about what he said up there. When we were still sitting in the chairs right there in the Court room, I turned to Buddy Fowler and said, "He's lying about what he said. I didn't see anything—nor see Jerry High." So we talked a few mintues and then I went to Jim Dunn's office, and I didn't want to just bring it out right then because I wanted to talk to either you or Buddy Fowler or the Chief. So I tried to indicate to Jim not to go any further with it because I wanted to talk with the Chief. I said, "Something's not right, Jim." And I didn't just come right out and say that Mike had perjured. And he asked me "Do you trust him?" I said, "Let's put it like this. Something's not right and I'll talk to you but I want to talk to my Chief. But anyway, I couldn't wait for the Chief because things were already boiling so I came and I started to talk to Buddy Fowler and then I said I would like to talk to the Chief—I like Buddy, I trust Buddy, but I though the Chief should have been involved in it. And then I got to thinking, well, I can't wait any longer, so I went and talked to Buddy Fowler and then Buddy and I went and talked to Jim Dunn. And I told Jim the whole story?

Q. Is there anything else that you want to tell me about?

A. I can't think of anything right now, Buddy. I'm nervous and I'm having—not trouble remembering—I'm just—everything I've told you is true—I'll say that much. If there is anything else that I can think of, I will be glad to bring it out voluntarily.

A. Okay.

/s/ Tom Beckham (L.S.)

SWORN to before me this 6th day of March, 1981.

/s/ Geraldine L. Shelly (L.S.)
Notary Public for South Carolina
My Commission expires 11-16-87

MIRANDA WARNING:

You have the right to remain silent. Anything you say can and will be used against you in a Court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one. If you desire to make a statement or answer questions, you have the right to stop at any time.

This is to certify that the above rights have been explained to me and that I have received a copy of same.

/s/ Tom Beckham
Date March 4, 1981

WITNESS:
/s/ (Illegible)

THE ABOVE MIRANDA WARNING IS ATTACHED TO AND MADE A PART AND PARCEL OF THAT CERTAIN STATEMENT GIVEN BY TOM BECKHAM TO TOMMY FRASER ANR JOHN LEATH OF SLED, UNDER DATE OF MARCH 4, 1981, AND SIGNED BY TOM BECKHAM ON MARCH 6, 1981.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Statement given by Tom Beckham, 100 Oak Street, Myrtle Beach Carolina, at 12:15 P.M. on March 4, 1981, to Tommy Fraser of SLED. Also present was John Leath, Special Agent of SLED.

This statement is taken with any and all knowledge which Tom Beckham will have involving the incident and arrest of Bobby Gore, Jerry High and three Cubans, on January 21, 1981, and also the knowledge he will have in a preliminary hearing held in Conway, South Carolina, of testimony given by narcotic Detective Mike Foreman. The preliminary hearing was held on February 26, 1981.

Q. Mike, if you will just start at the very beginning—I'm sorry, Tom, start at the very beginning and tell me what you know of this incident.

A. We had—this is Mike Foreman and I—Mike had called me at home the day of the 20th, and advised me that we had information from a confidential informant referred to as CI later, it's such a long word, that there was approximately 100 bails of marijuana stored in the Ship's Wheel Restaurant, and that there was another 100 bails coming in that night brought in by a truck—was coming from Holden Beach. We had had information approximately a week earlier of a load of marijuana coming in and the load of marijuana got to the entrance of Little River Inlet—I was watching through the night vision binoculars and it turned and went back out. We didn't have any idea where it went at the time. I went and got Mike—or he picked me up here at the house rather—we went up the

area that evening, I guess approximately 6:00 or 7:00 o'clock at night. On the way he was filling me in on what his CI had suposedly told him. His CI advised him that Jerr High and some Cuban individuals who supposedly were staying at this Colonial Inn Motel in Little River, were involved in it and that his CI was going to be the one driving the truck to bring it down here.

Q. Do you know who the CI was?

A. Well, I've since then found out that the CI is not Mike's CI; it belongs to his DEA CI. Mike was just taking credit for it being his CI giving information.

Q. Do you know what his name is?

A. I don't have any idea. I know Mike at one time had brought up this thing about somebody named "Snow White" but that was just something that the SBI had mentioned to him that somebody was after an informant named "Snow White". I have no idea what the guy's name is. So, as we got on up there, like I said he had filled me in on it. He had mentioned Bobby Gore's name also during the evening. He said that Bobby Gore was supposed to be out of town. He wasn't sure he was involved in it or not and that he was going to get more information later.

Q. Tom, as a result of this information that you have got from Mike Foreman, did you go anywhere on this particular night?

A. I went into the wooded area behind the—between the Welcome Center and the Ship's Wheel—stayed in the wooded area and one time—twice actually—I slipped out of the wooded area and went over to the back porch where these coolers are. And one cooler had a broken lock on

it. So I opened the cooler and just looked around with a flashlight because it was pitch black dark—scared to death because there was supposed to be this Cuban guy there with a machine gun—that's what Mike had been telling us that was supposed to be wanted for about ten murders. And looked inside and I couldn't anything—it had been cleaned out real good, swept and everything, look like it might have even been mopped. But you could still smell marijuana in it real strong. So I advised him on the radio of this. He had, during the evening, wanted to get some other people but he didn't know who he wanted to get up there and I advised him, I said, "Look, Detective Captain Fowler is in charge of us while the Chief's gone. He's in charge of the department, I mean, as far as detectives and all. Why don't we call him." He kinda hesitated but he went to a phone and called him and got them up there. This was previous to the time I went in the woods. So, I sat in the woods the rest of the night. I mean it rained and everything, I was soaking wet, sitting out there. I was scared this Cuban guy might be coming along the edge of those woods. I kept hearing tin banging but I think what it was was wind banging the tin roof on this barn

Q. Mike, what was the purpose of you sitting in the woods?

A. We were waiting . . .

Q. Excuse me, Tom.

A. To see if this truckload was going to come in, which the truck never showed up.

Q. Did you see anyone show up while you were sitting in those woods?

A. Not while I was sitting in the woods, but right at daylight that morning, I had gotten back in the car because I was cold and wet and I was talking the situation over with Mike. And besides a few people pulling in the parking lot of the Ship's Wheel, we were sitting there and this one car pulled up and this fellow by the name of Buzzard—he was supposed to be another informant Mike had —got out and he says, "If ya'll waiting on that truckload of marijuana—which I think you are—it's already gone to Calabash—it didn't come here. Somebody's tipped them off. There's people up here that know ya'll, know your tag number and they giving it out to everybody." So I just looked at Mike and said, "Mike, we gonna sit here all day watching this thing over here or are you going to get a search warrant since you've got this information and all?" So, he said he was going to get a search warrant. But before he left, a telephone company van pulled into the parking lot of the Ship's Wheel, a guy gets out with what looked like a piece of paper in his hand —possibly a work order or something—light colored piece of paper—he got out and walks to the front door of the Ship's Wheel, acts like he's trying to get somebody to the door. Walks toward the back there's a fence there. Looks over the fence, looks all around the ground. Gets back in his truck and he drives over to the Welcome Center. Goes inside just a second, comes out and uses the pay phone and leaves. So this time, Mike decides he's going to get the search warrant. So I go back in the woods and went over to a position where I was trying to watch the Ship's Wheel but I was about to freeze so I got in this old chicken coop along with this manure and everything. It was the only place dry I could find. And, approximately an hour later, he called me on the radio and said meet him at the

corner, which is the corner of the Welcome Center parking lot. I went to the corner, got in the car with him. He had the search warrant. I looked it over, everything looked good on the search warrant. We went back to the Ship's Wheel Restaurant, at which time, I was still scared about this Cuban guy he was telling me about, so I got my shotgun out of the car. Put it up there on the porch where I was going to be and Mike stood by the car. I took a copy of the search warrant and stuck it up in the spring that holds the screen door. Took the hacksaw and cut the lock off the cooler and there was 50 or 51 bails of marijuana. We was supposed to have counted 50 that morning and they counted 51 when they took it to Columbia. But I'd rather have over than under. But he started calling the County jail on the radio but he couldn't reach them so he called North Mytrle Beach and told them to get us some help up there. So a few minutes later, we started hearing sirens and everything and they started pulling up. So Mike starts hollering about all these Cubans that had been up there with machine guns and these people in the vans that had just left—one of them turned sideways. And you could look in the parking lot and tell that nobody had been in the parking lot besides us and the telephone truck.

Q. Tom, had anybody been there—had any Cubans been there?

A. No, there was no one there.

Q. Had you seen Jerry High there?

A. No.

Q. Had you seen Bobby Gore there?

A. No. At this time, I looked at Mike and said, "Mike, what in the fuck are you talking?" And Mike just

kinda waived me over to the side and said, "Look, we've got all these people up here with their sirens going and I don't want them to be mad at me." And then he flagged me back over there again, he says, "Look, I know what I'm doing, just let me handle it. I'm in charge. I've never let you astray. There's people that tipped them off and there's big people involved in this thing and we're going to smoke them out." So I figured at the time he knew what he was doing and he said just go along with so when people asked me about the van—the other officers there—I said, "Mike saw the vans. I hadn't seen any vans." And then I think Bill Knowles—no, it wasn't Bill Knowles—one of the officers from North Mytrle Beach—so I said, "Yeah, we saw some vans, we're gonna get some warrants later to get these people. We not gonna try to make any arrests now." But a few other people asked me and I said, "I hadn't seen anybody. Mike saw them when he came by."

Q. As a result of this information Mike Foreman had given out, were there any arrests made later?

A. Yeah, the part he had told me that night about the Cubans—I figured he was straight on that about the Cubans being there. Ellis Bellamy, a Detective with the County, he and I and Jack Blackwell and some officer from North Myrtle Beach—I don't know which one it was—decided to go see if we could find these Cubans at the Colonial Inn and talk with them. So as we started over there, Jack Blackwell called on the radio and said he had just seen a Cuban running from the back of the Restaurant into the woods. So . . .

Q. The restaurant or the motel?

A. Excuse me, the motel, I'm sorry. So we got out and looked through the woods back there and couldn't find anybody so Buddy Causey picked us up in a car and took us back to the Motel. So Ellis Bellamy and I took that car and went back to the Restaurant and as soon as we got there, they called on the radio that some of the officers down there had spotted the Cubans and were supposedly putting them under arrest. I said, "Oh, hell, what we doing now." So I get to the scene and here's this silver van there and they've got three people in one police car and one person in another police car. So I said, "Look, let's just take them to North Myrtle Beach Police Department because . . . Charles Sendler said, "Is that the van?" I said, "I don't have any idea. I can't identify it." So we took—I told them to take them to North Myrtle Beach Police Department until we got this mess straightened out. So it came over the radio to take them to the County Jail so they headed to the County Jail with them. One of the officers, Bill Knowles, handed me the drivers license and says, "Here's the one in my car." So I took the drivers license and went back up to the Restaurant, and as we drove up in the parking lot, I went to look at the drivers license and its was Jerry High's drivers license, which—I don't whether it was just that the Cubans had jumped in the van with him or anything—it was just a coincidence that they had caught the Cubans with Jerry High and it kinda fell along with Mike's story. So I gave Mike the drivers license and he just looked at me like I had slapped him in the face, and said, "Let's go on to the jail." As we got to the jail, Mike said, "Look . . . on the way rather, he said, "Look, just go along, I know what I'm doing. I've never led you wrong." He was just telling me the same thing he told me earlier. Said, "We've got some people

we got in jail. We gonna have to go ahead and get the warrants on them, get them on bond. We'll get it all straightened out. But we've got to go along with the story because we've got to smoke these people out." So Mike had been back there for nine months and ten years in law enforc ment, I figured he knew what he was doing.

Q. Tom, how long have you been a member of the narcotics squad?

A. About two and one-half weeks.

Q. How long have you been in law enforcement all total?

A. Well, two separate years with Myrtle Beach and then a year with the County.

Q. Now on your way to the jail, Mike Foreman had given you some type of indication that you should fabricate some kind of story as to what has happened—the reason these people were under arrest?

A. No, he came up with the story and told me to just go along with with it—that the people had been there and all that stuff.

Q. That the people—Jerry High and the Cubans—had been there and told you to go along with it?

A. Yes, sir.

Q. Had they been there?

A. No, sir, they hadn't been there.

Q. Had not been there.

A. No, sir, had not been there.

BY JOHN LEATH:

Q. How about Bobby Gore? Did you see Bobby Gore there or see him anywhere?

A. Well, the only time we even anything to indicate him being there was when this informant was telling us about the marijuana going to Calabash, he pointed out a truck going by on the road, this blue Ford pickup truck, and said, "There goes Bobby Gore. He just left the Restaurant."

BY MR. FRASER:

Q. Who pointed that out?

A. This informant—Buzzard.

Q. Buzzard pointed the truck out?

A. Yes, sir.

Q. Did ya'll see a pickup truck of that description pull into the . . .

A. No, there's was no pickup truck or anything—the only vehicle that pulled into that parking lot was the telephone company truck.

Q. Continue on.

A. We got back to the jail, and there was so much commotion going on. People out there with the marijuana and people running around the jail—just everybody gone crazy. So, Mike says, "We've got to get that van searched, Tom. We've got to get the van searched." So I was going to do an inventory search on it. As a matter of fact, I had already opened the door and the Solicitor walked up and said, "Do ya'll do that on all vehicles?" And I said, "Well,

they've just started a policy where they inventory any seized vehicle." So he said, "No, let's do it with a search warrant. Come to my office and we'll get up an affidavit." So I told Mike that they wanted to get an affidavit and search warrant to search the van. So I started over to the Solicitor's office and Mike came over with me. And we all got to the Solicitor's office, Jim Dunn and one of his secretaries—I don't know what her name is—and Mike and myself.

Q. About what time of day was this, Tom?

A. Probably 2:00 o'clock by this time. I'm not sure. I don't have any idea . . .

Q. That would be 2:00 P.M.?

A. Yes, sir. So, Mike tells his story in the presence of all of us right there in the Solicitor's office. And he called me to the side and said, "Just get it worded just like that—to that effect." And he said, "Like I said, everything will be cool. We'll get all this stuff straightened out. We just got to go along with it for now." So the Solicitor and I took the story that Mike had just given us and worded the affidavit.

Q. Was the story that Mike had just given—was it the truth or was it a lie?

A. It was the same thing that Mike had told me on the way back. It was a fabricated story. So as we got back—got through dictating the affidavit, he had got in notes. So I took all this over to the DA, all these notes. And we typed up the affidavit for the search warrant. And for each individual person, we added a little bit to the bottom of the affidavit and made that the affidavit to each

person's arrest warrant. So, I told Mike that we needed to go ahead and get this stuff done. I didn't have no idea that I was gonna have to be the one to end up signing all this stuff. It was Mike's idea and I was hoping he was going to sign it. But DEA and Customs and the SBI and a few others that had a bunch more boat loads of marijuana and they had one coming up the waterway and everybody had to leave. And Mike told me before he left, "Get these warrants signed so we can get this people on bond so we can get this thing cleared up. So me, like a dummy, I signed these affidavits for these warrants. Got the people on bond.

BY MR. LEATH:

Q. Let me ask you a question, Tom. When ya'll were at the Solicitor's office, you and Mike—and ya'll were there with the Solicitor and his secretary—one of his secretaries —Mike—did the secretary take the notes of what ya'll were going to put in the affidavit so you could remember it?

A. He just told everybody—told all four of us—told the three of us and himself—he told his story and then before he left, he called be (sic) aside and said, "This is the way. Just get it worded just like that and everything will be alright."

Q. But there wasn't any notes made—you don't think the secretary took any dictation or anything about the story that Mike had made up and then he came back later and told you to tell them that again and then ya'll get the warrants?

A. No, I think she was just listening as it went along and Jim just sitting back—you know how he kinda lifts his head back and thinks.

Q. You don't know which one of the girls it was?

A. It's the light-headed girl that sits back in Roy Luke's office. Has her desk back there. I can't remember her name right now.

Q. Rene'?

A. I think that's her name, yes. But he didn't come back. He just called me to the side before he left the office. He didn't come back to the office.

Q. But while ya'll were at the office with the Solicitor and the secretary, he ran through this fabricated story or whatever and then you later got with the girl or whatever and wrote up the thing.

A. With her and the Solicitor. The solicitor specifically asked me "Can you identify anybody that was there" and I said "No." I told him I couldn't. There's no way I could identify anybody.

BY MR. FRASER:

Q. But you did sign all the affidavits and the arrest warrants?

A. I signed all of them.

Q. And the search warrant for the truck?

A. Yes, sir.

Q. But you did this at whose direction?

A. Well, I did it at Mike Foreman's direction because he told me that he had this plan.

Q. And as a result of you signing these warrants, the subjects were placed in the Horry County Jail?

A. They were already in the Horry County Jail when I signed the warrants.

Q. And since that time, they have been released on bond, is that correct?

A. Yes, sir.

Q. The affidavits that were signed were fabricated?

A. Yes, sir.

Q. The subjects that were placed in jail—you have never seen anyone around the Ship's Wheel Restaurant on January 21, 1981?

A. No, sir, I've never seen them before—I didn't know any of them.

Q. You didn't know any of them?

A. No, sir.

Q. Now, let's move up to the preliminary hearing that was held February 26, 1981. Were you present at the preliminary hearing?

A. Yes, sir, I was present at the hearing and just before the hearing Mike had talked to me in this little room right across from the Court room that we were going to use.

Q. Now, whose preliminary hearing was it?

A. It was Jerry High's and Bobby's—it was all of them?

Q. It was all of them?

A. Yes, sir. But the only two people that appeared was this Jerry High and Bobby Gore. That's the only two

Defendants. Bob McInnis was the defense attorney. Just a few minutes before the hearing, Mike was late getting over there and I told Jim "I'm not proceeding with this thing without Mike."

Q. Now, who is Jim?

A. Jim Dunn.

Q. The Solicitor?

A. Yes, sir. I talked to Mike in this little room. He had called me in across the thing over there—across the hall and he said "You gonna need to go along with this thing just the way I've said. It's gonna take longer than what we thought." And at this time I told him "Mike, you talking about perjury." I didn't know what he was gonna do but I said, "You can get ten years for that." And he said, "No, don't worry about it. No problem. Just—we'll get our stories together and there won't be any problem." I told him "Mike, I can't get up there and lie about this on the stand." And about that time the Solicitor opened the door and came in so we had to cut the conversation. So they were talking in there—I forgot what the conversation was, I was way off in thought at the time—I was scared to death. Anyway, we started to go in the Court room and just before they started calling the witnesses, Mike called me back there where they serve coffee and said, "Look, I'm telling you now. You're gonna have to go along with this thing. There's trouble brewing now. If you don't go along with it, there's going to be trouble." And about that time, they called him to go to the stand so he had to leave me standing there. We went in the Court room and Mike took the stand and Mike got up there on the stand and started telling the story just the way he had

fabricated it before. Talking about how he had seen the people there. And he even indicated that I had told him on the radio that I saw Jerry High in a van there and that there was three people that looked like Cubans with him and he had already indicated that I was supposedly 200 yards away in the woods, and I don't know how I could have told him something like that from that distance anyway.

Q. Did you tell Mike Foreman on the radio that Jerry High was there in the van with the Cubans?

A. I had a walkie-talkie and Mike was talking about a place that was six or seven miles away where I was supposed to be talking to him from. Which, if I had, I would have had to be talking on the repeater, which my radio wouldn't reach because I had been in the woods all night.

Q. So you did not tell him?

A. No, sir. The only thing I told him was when he came back to the area, he said, "Motrow" and I said "Go ahead" and he said, "Meet me at the corner" and that's all that was said. There's nothing else said on the radio.

Q. Was the testimony that he gave—was that a lie?

A. The whole thing that he told on the stand was a lie. And the more he talked, the more you could tell it, too. I mean I think . . .

Q. Tom, did you ever testify at the preliminary hearing?

A. No, sir, Jim Dunn, the Solicitor, kept coming to me and asking questions about "what can you testify to", "can you testify to this", "can you testify to that". I said,

"Jim, I can't testify to any of that." And he just looked at me real funny.

Q. And why could you not testify to it?

A. I'm not going to get up there and lie. I had already told Mike I wasn't and I was not going to.

Q. And as a result of Mike Foreman lying during the preliminary hearing—what Judge was used during the preliminary hearing?

A. Judge Olin Blanton—Magistrate in Myrtle Beach.

Q. Judge Olin Blanton?

A. Yes, sir.

Q. And as a result of Mike Foreman lying on the witness stand, did you go see any of your superiors to tell them about it?

A. I told—turned around right there in the Court room and told Captain Fowler, I said, "Captain, I have not said anything on the radio. I have not told Mike I saw Jerry High in that van." I said, "I'm gonna need to talk to somebody." And he said okay and he got to talking with—I don't know whether it was Jim Dunn or one of them over—but I was going to go to Jim Dunn's office—we had an armed robbery trial going on at the time and I was a witness in it. So I stopped there for a couple of minutes—waited around there for a while and went ahead and testified. And then I went to Jim Dunn's office and told Jim—I went to his office first and came back to the armed robbery trial—but when I went to his office. I wanted to talk to my Chief—I didn't want to just come straight out and tell the Solicitor at first because I wanted the

Chief to be aware of it. I thought it was his perogative that he should be aware of it first.

Q. And subsequently, did you ever talk with the Solicitor, Jim Dunn, about it?

A. Yes, sir, I went to his office and I told him, I said—well, when I first went to his office, I said, "Jim, something's not right. I think you need to hold this up right where it is." I said, "I would have been pleased if it had been dismissed at the preliminary but it's gone farther than that. I need to talk with the Chief and I'll be back to talk with." And he started asking me "Do you trust Mike? Do you think he's lying?" And I wouldn't tell him that I thought he was lying. I just said something is wrong. I needed to talk to my Chief. I felt like the Chief was the man in charge of my department and I needed to talk to him first before I came forward with anything." The Chief being out of town, I went to talk with Buddy Fowler. And I talked with him a little bit and I came back to talk with the Solicitor some more and went in the back and I told Buddy Fowler the whole story. That the whole thing was fabricated and he and I went back and told the Solicitor the whole story.

Q. And the Solicitor is aware that the whole case was fabricated?

A. Yes, sir.

Q. Tom, do you have any knowledge concerning a set of keys that were found at the county jail. Claude Bellamy came to me about 10:00 o'clock P.M. the night of the 21st. jingling a pair of keys in his hand and said, "Do you have any idea what these go to?" I said, "Yes, I believe I

do. Where did you find them?" And he took me back there and showed me a place on the floor where had found them. So I took the keys and went back there and put them in this lock that I had cut off the door of the cooler and they fit it.

Q. The door of what cooler?

A. The door of the cooler where the marijuana had been stored.

Q. At the Ship's Wheel Restaurant.

A. Yes, sir. So the keys had been found there at the jail—at the back door. So I told Mike we had found the keys and he said, "Who brought Jerry High in?" and I said "Bill Knowles or Jack Blackwell—one of the two." So—I don't know whether it was Mike—I think it was Mike called Jack Blackwell—and said, "You did see Jerry High throw something at the back door, didn't you. You did see Jerry High throw something at the back door."

Q. Did you hear this conversation?

A. No, this is just what I had heard at a later time—I can't even say where I had heard it.

Q. You didn't hear Mike say this?

A. No, sir, this is just hearsay. This is just leading up to later on—the next thing I know, Bill Knowles was in a few weeks later . . .

Q. Who is Bill Knowles?

A. This is another officer with the Department.

Q. A county police officer?

A. Yes, sir. And he came in there and says, "I'm here to give a statement in reference to the keys." I said, "To the keys?" and he said, "Yeah, the keys that were thrown at the back door." And he said, "I need your case file, I need your report to get the date and time of the arrest and all." Said he was going out of town and he needed this to get it for a pre-trial hearing. Said Mike needed the statement for the pre-trial because he was scared he couldn't get the keys into evidence. Mike had told him he had a real strong case but he couldn't get the keys in there. So a little bit later Mike—excuse me, Bill Knowles brought me back a signed statement in reference to the keys. The only thing he indicated in his statement—it was a real strong statement to get to the point that it was strong to leave questions in somebody's mind—but he told me, he said, "Tom, I didn't see anybody throw anything—I'm not going to say I saw anybody throw anything." Said he needs to get this entered into Pre-trial and he said, "I'm not gonna get up there and lie about this." And he gave me the statement. At a later time, the second time I went back to the Solicitor's office after the preliminary hearing, I took that statement from there because I knew Bill had been pressured into the statement, even though it didn't come outright and . . .

Q. Who pressured Bill into a statement?

A. Well, Mike Foreman had contacted and that's what Bill had told me—that Mike had contacted him. So I took Bill's statement—I took the copies from the file and I destroyed all three of them. I told the Solicitor that I destroyed them and I had threw them in the dumpster behind the jail. But I was not trying to—I guess I just didn't think when I did it but it was a situation where Bill

was just pressured into the thing—Bill's a good police officer. And I don't think he had ever done anything wrong in his life and he was just pressured into this.

Q. Did you read the statement that Bill gave?

A. Yes, sir.

Q. At any time, did Bill Knowles have in his statement that he saw Jerry High throw a set of keys?

A. It said something to the effect that Jerry was left at the back door of the jail facing out and he turned inward and it appeared that he may or could have thrown something and Bill took a quick glance and looked and didn't see anything and took him on away from there. He didn't say anything about he saw him throw anything or saw him throw any keys. Didn't even mention keys to my knowledge, I don't believe. But it did say it appeared he may have or could have thrown something. As a matter of fact he mentioned later on that he had purposely used that word appeared because he didn't want to get up there and lie about it.

Q. Tom, would this be a fair statement to make—that the information that was in the affidavits that you signed—the information in the arrest warrants that you signed involving Jerry High, Bobby Gore and three Cubans were all fabricated?

A. Yes, sir.

Q. And it was fabricated between who?

A. Well, it was fabricated between Mike and I—is where it was fabricated.

Q. The testimony that Mike give at the preliminary hearing that you were present at—and you state that the majority of it also was fabricated.

A. Yes, sir.

Q. And why did you decide to tell the truth, Tom?

A. Well, for the purpose that even though during the first part when all of this first started and everything, he never just came right out and said it but he indicated to me that this mess was going to be straightened out before it even got to the Court room.

Q. He, who?

A. Mike Foreman. And I felt like I had been drug into something. I can't live with myself to get up there and lie on the stand. Now if you do something for an investigation and spread some rumors or something for investigation, that's one thing but when you get up there and lie on the stand—I realize I signed that warrant under oath—but he indicated that this was going to be straightened out before it got to Court and it was all going to be worked out. But I knew that he had lied to me too and I was not going to get up there and lie on the stand I can't live with that—I'm a better man than that.

Q. To your own knowledge, do you know what the disposition of this case is now?

A. This particular case?

Q. Yes, sir.

A. Just from what I read in the paper and all, that it was being dismissed.

Q. And since that time, Tom, has there any administrative action been taken against yourself or Mike Foreman?

A. Yes, sir, I've been terminated and Mike's been fired.

Q. John, do you have any other questions?

BY MR. LEATH:

Q. The only one thing I have is—at the time, when you were with the Solicitor getting up the warrants and everything, did you know then, Tom, that all that was a lie?

A. Yes, sir, I knew it at the time.

BY MR. FRASER:

Q. Tom, do you have anything that you wish to add to this statement that John Leath or myself did not ask you?

A. I had mentioned it to Buddy Causey—I don't know whether it's even proper to bring this up, but the day that I had been in the Solicitor's office all that afternoon, Mike came over here that afternoon, parked right in front and I was getting ready to go somewhere. And I met him at the car and he said, "What were you doing in the Solicitor's office all day?" I said, "I was talking with him about that armed robbery trial" and he told me, he said—he just looked me right straight in the eyes and it felt like icicles coming at me. And he said, "Well, I guess I'm going down but I'm gonna take a couple with me." At the time we had another little thing going on that Mike was involved with and I don't know whether he was referred to that or referred to this particular thing here.

Q. And what would that be?

A. It was a situation where Mike had gotten into a disturbance, I forgot which night it would have been now—it would have been a couple nights earlier than that. It was under investigation—it was just a little incident where he had gotten into a disturbance with a fellow—fired his gun in the air. I don't know, that particular incident right there made me start thinking about him too, I was just wondering about him.

Q. Who was investigating this incident?

A. Buddy Causey.

Q. And he's lieutenant with the Horry County Police Department

A. Yes, sir.

Q. Is there anything else Tom?

A. No, sir. I don't think there's anything else to be said. I've just been truthful with you as much as I can.

BY MR. FRASER: This concludes this statement at 12:50 P.M. on March 4th, 1981.

Tom Beckman, (L. S.)

SWORN to before me this 6th day of March, 1981.
Notary Public for South Carolina

(p 83) A Not the exact words other than the fact that I was being terminated.

Q What do you recall telling anyone about your employment, what you would do at that point in time?

A Nothing at that point in time. Earlier I asked if I should resign. This was after the chief and I first got through with our first conversation, and he said, "no, I don't think so, at this time."

Q Why did you offer to resign, Tom?

A Just like what I told you a few minutes ago, the emotional state, I just—at the time I didn't care what happened.

Q After you were fired, what happened next?

The Court: I didn't understand that. What did he say about attempting to resign?

Mr. Leiter: He said that because of his emotional state—

The Court: Did he say he offered to resign?

Mr. Leiter: Yes, sir, Your Honor.

The Court: But the chief would not accept his resignation?

Mr. Leiter: That's the way I understand it.

The Court: That's the visit in which he terminated you?

The Witness: No, sir, a later time the same day.

The Court: Did you offer to resign before or after

* * *